

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

December 28, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 22, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY has expanded its operations to include an office in Illinois and would like written guidance regarding the application of Illinois sales and use tax laws as applicable to their situation.

Business operations consist of contracting with customers, who are located in various states, as a seller of direct mail messages. Sales consist of the printing of a letter on bond paper, a standard #10 container, a business reply envelope, postage, computerized file processing, addressing, sealing and mailing (using U.S. Postal Service as common carrier). The company performs all aspects of the mailing; no outside vendors are used. Mailings are sent to recipients residing in various states who upon receipt become owners of the contents. The mailings do not consist of printing sales messages, and receipt is anticipated by the recipients.

The following facts and circumstances may be considered:

1. Mailings may originate from customers both within and outside of Illinois.
2. Mailings may be sent to both Illinois and non-Illinois residents.
3. Supplies used in producing the product may or may not be purchased from within Illinois.

It is our understanding that paper and ink (or toner) used in these mailings will not be considered tangible personal property with regard to the Illinois Service Occupation Tax (SOT). No merchandise is being transferred to customers other than the paper and ink included in the mailings.

We would like guidance if any of the transactions described above will be subject to Illinois sales or use tax.

If you have any questions or require more information please do not hesitate to call. I can be reached between the hours of 8 am and 5:30 pm, Pacific time. Thank you in advance for your attention to this matter.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to

suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

We are assuming that your client is not registered with the Department. The majority of printers are considered de minimis servicemen. Your letter does not contain sufficient information for us to determine which de minimis option applies to your client. However, if your client is not otherwise required to be registered as an Illinois retailer (e.g., it does not print stock or standard forms), it could choose to use the fourth method and pay Use Tax to its Illinois registered suppliers or directly to the Department as described above. In that instance, your client's customers incur no tax liability on their purchases.

If your client is otherwise required to be registered under the Retailers' Occupation Tax Act or chooses to be registered with the State, it may use the third method described above for registered de minimis servicemen. It would pay Service Occupation Tax (which does include local taxes) directly to the Department based upon its cost price of tangible personal property transferred incident to the sale of service (cost price of the materials, such as paper and ink). Your client would give its Illinois suppliers resale certificates when it purchases materials in Illinois, such as paper and ink, that become a part its final product. The customers of your client would incur a Service Use Tax liability when making such purchases, which your client would collect and remit to the Department. Servicemen paying Service Occupation Tax are not required to separately state tax on a customer's bill unless that customer specifically requests that the Service Use Tax be separately stated on the bill.

Servicemen using the options mentioned above, other than the unregistered de minimus option, should note that the interstate commerce exemption is available for sales in which the Illinois seller is obligated to make delivery of tangible personal property, and does make delivery, to a location outside Illinois and the tangible personal property is not to be returned to Illinois. See the enclosed copy of 86 Ill. Adm. Code 130.606(b). However, where the purchaser takes delivery in Illinois, the sale is taxable even if the purchaser will immediately remove the item from Illinois. See Section 130.605(a).

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I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.